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80-1404

IN THE
SUPREME COURT OF THE UNITED STATES
1980 Term

No. _____

ALBERT T. EHLERS

v.

DEVON BOGUE, ET AL.

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FIFTH CIRCUIT
ATLANTA, GEORGIA

The Petitioner, Albert T. Ehlers, prays for a Writ of Certiorari issue to review the opinion and judgment of the Court of Appeals, Fifth Circuit, rendered in this proceeding on October 2, 1980.

Albert T. Ehlers, Pro Se
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Atlanta, Georgia 30305

February 15, 1981.

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Case Citations

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v.
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OPINIONS AND/OR JUDGMENTS RENDERED IN CASE

The order or judgment of the U.S. District Court was entered on February 15, 1980, and appears at Appendix A, page 1.

The order of the Court of Appeals, Fifth Circuit was entered on October 2, 1980, and appears at Appendix B, page 8.

The order of the Court of Appeals, Fifth Circuit, denying rehearing was entered on November 20, 1980, and appears at Appendix C, page 10.

JURISDICTION

This petition for certiorari was filed less than 90 days from date of aforesaid. The jurisdiction of the Court is invoked under 42 USCA 1983 and 28 USCA 1343.

QUESTION PRESENTED

Whether administrative inspection of private property at random on perchance of detecting non-compliance with health ordinances in lieu of permission of owner and without warrant and no exigent circumstances is without ambit of protection of Fourt Amendment of United States Constitution.

CONSTITUTIONAL PROVISION INVOLVED

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

In the latter part of 1979, Defendant Hitchcock, a County Health Sanitarian, entered onto a city lot, measuring 50 feet by 150 feet, owned by Respondent and on which lot was situated an apartment building. The intrusion upon the property was occasioned in the course of an administrative routine neighborhood area inspection at random for the purpose of detecting perchance violations of health ordinances.

No permission was requested and none was given for the search.

Shortly after searching premises, the sanitarians personally cited Respondent for "harboring rats." The citation was the aftermath of a heated confrontation between parties at issue. The ordinances provide penal sanctions.

Respondent instituted in District Court a Complaint charging Defendants with violating his right to the peaceful and quiet enjoyment of his property, charging in particular the entering without permission upon private property of owner by officers acting under color-of-state law and without warrant as violating his rights as guaranteed by the Constitution of the United States, under the Fourth Amendment.

The District Court completely ignored Defendants plea of defense, "reasonable exercise of police power vested in the state," and substituted instead a discourse on the law and at the same time granted a Motion for Summary Judgment although unsupported by Defendants arguments.

Excerpt of the order is as follows: "... no justification for defendants search (notice court language search) it is equally well established, however, that the Fourth Amendment has no application to 'sights seen' in the open fields."

Therefore, the District Court held that the

open fields exclusion from the Fourth Amendment applied in this case and that the intrusion by defendants did not rise to the level of a constitutional violation. The court went on to preface its order with the following: "Defendants are cautioned, however, that this result is dictated by the peculiar facts of this case. The Georgia Code Annotated, Chapter 88-3A, enacted in 1975, provides for Administrative Search Warrants under the standards laid down in Camara v. Municipal Court and See v. City of Seattle. The Constitution requires and the law provides for obtaining such warrants, absent consent or bona fide emergency, prior to conducting these health inspections. Defendants are admonished to heed this mandate."

Court of Appeals affirmed.

REASONS FOR GRANTING THE WRIT

The Lower Courts have decided a federal question involving Fourth Amendment which is not in accord with applicable decisions of this Court.

For instance the Lower Courts cited the Western Alfalfa Corp. 416 US 861 as governing case at bar. Albeit, upon close examination it is clear that no way is it remotely akin to Respondent's case and is dissimilar in the following pertinent particulars:

The Western Alfalfa case is a Civil Action based upon a Civil Action. The Respondent's case is a Civil Action growing out of a criminal accusation. The safeguard of the Fourth Amendment is more generously applied in such circumstances.

In the Western Alfalfa case, the corporation had been given a hearing, therefore, the inspector had prior information regarding pollution prior to intrusion upon the property.

Respondent had no notice and no hearing prior to intrusion. Had not been accused of any violation beforehand. The inspectors had no prior information of any violations beforehand and had not observed anything until upon the property to be searched at random.

In the Western Alfalfa case, the inspector visited property to observe what any member of the public could observe, plumes of smoke in the sky, but he intruded only on such part of the property as was reasonably not expected to be under the immediate control and use of the owners and not reasonably expected of privacy, a field. He was forearmed with reliable information and belief of a violation or infraction.

In the Respondent's case, the inspectors routinely assigned themselves a neighborhood zone at random for the purpose of making a block by block inspection of properties for perchance

health violations. The inspectors had no prior knowledge of any health violations of any particular property owner. When they came to the Respondent's premises, a lot approximately measuring some 50' x 150' on which is situated an eight-unit brick apartment building, their objective in the course of the random investigation, was to inspect property for compliance with their interpretation of a health ordinance as they had done on other properties without the bother of asking permission of anyone.

They ercircled the premises, a city lot and not a field, and gave the property a thorough inspection as affidavit attests.

In Western Alfalfa, the inspector entered onto the property, having knowledge from a hearing beforehand of the pollution, to observe smoke. His primary objective had to do with a thing, not to inspect a place or intrude upon privacy. At no time did he inspect property of corporation. He inspected what the corporation had abandoned to the sky and nothing else.

In the case here, before the Court, the inspectors entered onto the premises for the primary purpose to search for evidence of non-compliance with health ordinance perchance there were any. As they proceeded to make their search without asking or receiving permission or warrant, no probable cause, no exirgent circumstances, no nothing, they just proceeded to search. They inspected holes in the foundation of the building, holes in walkways and around a metal dumpster, a large garbage container.

Their search for any kind of violation led them to the rear of the building. They entirely encircled the building. They inspected building foundation vents on all four sides of the building. The lot has what is generally known as a front, two side yards and a back yard and, alas, no rats.

In the Western Alfalfa case, the Supreme

Court noted that although the health official was on property that was private, there was no showing that he was on premises from which the general public was excluded, the property being considered a field or open countryside, portion of corporation's property.

In the Respondent's case, the health officials or inspectors traversed and encircled the entire premises, front, sides and rear. All of the property of owner, garbage container not for garbage but for rats, for they had to look inside container to view accessibility to rats to outside as well as to view accessibility to rats from outside to inside.

There is a reasonable inference in this case that the Respondent has an inalienable right to a portion of his property to be in his custody and control and not reasonably expected to be open to the public and reasonably expected of privacy even though barriers, obstacles, and signs delineating such areas are not evident and here, as in the case of Katz v. US 389, page 347 ... bypassing a neutral predetermination of the scope of a search leaves individuals secure from Fourth Amendment violations "only in the discretion of the police." (Note use of word individuals and not corporations.)

In Western Alfalfa, the complaining party was a corporation and the inspection was of a thing, smoke. The Court ruled rightly so Fourth Amendment protection does not apply.

But, the Respondent's case: the complaining party is an individual and the inspection was the possessions of an individual. In such a situation the Fourth Amendment most certainly applies its protection where acceptable standards of search and seizures have not otherwise been met.

In Western Alfalfa, the intrusion was administrative, although the Courts have held Fourth Amendment protections extend to administrative

as well. The intrusion was without permission. His objective was to observe and justly so. In the Marshall v. Barlow's, Inc., 436 US 307, it was held "what is observable by the public is observable without a warrant" (page 315). As in the Western Alfalfa case the inspector observed, he did not search. He observed what anyone in the city could observe, abandoned plumes of smoke.

In the Respondent's case, the primary objective was to search not to observe from a neutral position. And when the inspectors not only once, but twice (see affidavits) entered upon the property without having observed beforehand from a neutral position or from a position at which they had a right to be, probable cause or exigent circumstances, their search of the premises without permission of owner or without warrant is illegal, not only a trespass, willful, but a violation of the acceptable standards of search and seizures as enunciated by the Supreme Court.

CONCLUSION

The District Court made much to do over the relationship in this case between the inspectors and the petitioner which took place after intrusion complained of onto owner's property, and the fact that the petitioner signed pro se after his signature.

It is felt by the Respondent that the purpose served only to prejudice his case and was neither relevant nor appropriate to the issue.

The Court of Appeals equates observation with search. There is a vast difference which any dictionary will attest; e.g., Observation, A taking notice or paying attention; Search, To go through or examine carefully in seeking to find something.

This case is illustrative of serious misapplication of Court's decisions in reference to Fourth Amendment exclusions and particularly addresses itself to the holdings of the Court; "when enforcement officers are left to their own violition without restraint it often leads to abuses."

In a case such as this, there is small inconvenience for health inspectors to request permission to inspect premises of an owner and in cases of refusal, warrants. Only in few instances would it ever be necessary.

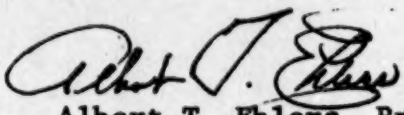
Misconceptions of the protective principles of the Fourth Amendment is legion among law enforcement officers and the tendency to erode and stifle its concept is not only further confusing to enforcement officers but inimical to our form of government.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

May it please the Court, nowhere is there one iota of evidence in the record that the sanitarians viewed or observed from a neutral position

any scene or act prior to their entering onto the premises justifying their search without permission and in lieu of warrant. Nor do the sanitarians attest there was.

Respectfully submitted,



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